

R E M A R K S

- Claims **1 – 4, 6 – 49, 51 – 57 and 63 - 71** are currently pending.
- Independent claim **67** has been cancelled herein, without prejudice or disclaimer.
- Of the claims that will be pending after entry of the present amendment, only claims **1, 52, 53, 56, 57, 58, 63, 64, and 66** are independent.
- All claims stand rejected.

1. RCE

The present Amendment is being submitted in response to a Final Office Action. Accordingly, to ensure consideration of the Amendment, Applicants have submitted a Request for Continued Examination herewith.

2. Claim Rejections – Section 101

Claims **1 – 4, 6 – 49, 51 – 55, 63 – 67 and 71** stand rejected under 35 U.S.C. §101 as being directed to non-statutory subject matter. Specifically, Examiner explains that the claims are rejected under §101 “because these claims have no connection to the technological arts. Applicants maintain, from the Response to the Previous Office Action, that this is not a proper standard under §101. The Examiner has clarified that the standard being applied to the pending claims is “the current Office Policy concerning the interpretation of 35 U.S.C. 101 and the technological arts”. Applicants respectfully submit that because the PTO has previously allowed method claims that did not recite “technological arts” but that did meet the “useful, concrete and tangible result” standard set out by the

Federal Circuit, as discussed in the Response to the Previous Office Action, this change in the PTO's standard is an arbitrary and capricious change in policy because it was instituted without proper notice and comment.

However, solely to expedite allowance of the pending claims, and without prejudice or disclaimer of the subject matter of the claims as pending before the amendments made herein, Applicants have amended each of the pending independent claims to recite the use of "technology." Accordingly, Applicants respectfully request that the §101 rejection be withdrawn.

3. Claim Rejections – Section 103

3.a. The References Do Not Teach or Suggest All Claim Limitations

Claims 1 – 4, 6 – 49, 51 – 57, and 63 – 71 stand rejected under 35 U.S.C. §103(a) as unpatentable over U.S. Patent No. 5,584,025 to Keithley ("Keithley" herein) in view of U.S. Patent No. 5,819,092 to Ferguson ("Ferguson" herein) and in further view of U.S. Patent No. 6,058,379 to Odom ("Odom" herein).

Although Applicants do not agree with the Examiner's interpretations of the references, Applicants have amended each of the pending independent claims herein (with the exception of claim 67, which has been cancelled) to recite features in accordance with one or more embodiments of the present invention that are not taught or suggested by any of the references of record. Applicants have so amended the claims solely to expedite allowance of the pending claims.

None of the prior art, alone or in combination, teaches or suggests the following claim limitation, which is generally recited in each of the pending independent claims:

- (i) *transmitting, to a homeowner of a home that is not currently being marketed as being for sale, an offer to provide compensation to*

the homeowner in exchange for the homeowner's permission to display a picture of the home (or transmit information about the home) to a viewer

Neither Odom, nor Keithley nor Ferguson describes transmitting any offer to a seller of any property, much less transmitting an offer to an owner of a home that is not currently being marketed as being for sale, to provide compensation to the seller in exchange for the seller's permission to display a picture of the property, or transmit information about the property, to a viewer. In Odom and Keithley there is no need to provide such an offer to the seller, as the seller is already motivated to contact the system and list their property as being for sale in order to increase the chances of selling the property. In Ferguson no seller or owner of a property is described at all, much less transmitting any offer to a seller or owner of a property. Since none of Odom, Keithley and Ferguson teach or suggest feature (i), the combination thereof likewise fails to teach or suggest feature (i).

Further, none of the references, alone or in combination, teaches or suggests the following claim limitation, which is generally recited in each of the pending independent claims:

- (ii) *informing the viewer, before the viewer indicates any interest in the home, that the home is not currently being marketed as being for sale*

Odom describes a process where a seller, after bids are received for the item the seller has listed as being for sale, may not sell the item and thus retain control of the item "should the best bid be unacceptable." Col. 8, lines 25 27. However,

the bidder's are not notified of the seller's decision until after the bids are received from the bidders. Col. 8, lines 28 – 30. Odom does not describe informing a bidder, before the bidder submits a bid or otherwise expresses interest in an item listed in an auction by a seller, that the item is not currently being marketed as being for sale. It would not make sense to modify Odom to include such a feature since by virtue of being included in the Odom system, the item of a seller is currently being marketed as being for sale, irrespective of whether a seller may, after bids are received for an item, decide not to sell the item. Neither Keithley nor Ferguson describe any feature that may in any manner be interpreted as even suggesting feature (ii). Accordingly, the combination of Odom, Keithley and Ferguson does not teach or suggest feature (ii).

3.(b). No Proper Motivation To Combine Has Been Provided

The Examiner has provided various statement regarding motivations to combine the prior art in the suggested manners. Applicants respectfully submit that the statements are not proper evidence of a suggestion or teaching of why one of ordinary skill in the art would have combined the references as suggested, but are merely conclusory statements of alleged improvements to the prior art that may be achieved via the proposed combinations. Accordingly, Applicants respectfully submit that a *prima facie* case of obviousness for any of the pending claims has not been established and the rejection is therefore flawed.

Conclusion

For the foregoing reasons it is submitted that all of the claims are now in condition for allowance and the Examiner's early re-examination and reconsideration are respectfully requested.

Alternatively, if there remains any question regarding the present application or any of the cited references, or if the Examiner has any further suggestions for expediting allowance of the present application, the Examiner is cordially requested to contact Magdalena M. Fincham at telephone number (203) 461 - 7041 or via electronic mail at mfincham@walkerdigital.com.